

THE STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

CashPoint Network Services, Inc.)
Treatment of Customer Payments by)
New Hampshire Regulated Utilities)

PETITION FOR EXPEDITED DECLARATORY RULING
BY OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) pursuant to RSA 363:28, II (Supp. 2003) petitions this Commission on behalf of residential ratepayers for expedited declaratory relief concerning the treatment of funds paid to CashPoint Network Services, Inc. (CashPoint) by ratepayers, in payment of New Hampshire regulated utilities' bills.

On information and belief, CashPoint operated a number of payment points within New Hampshire at which customers of various businesses, including some New Hampshire public utilities, could make payments to be electronically transmitted to those businesses or utilities. In late April, 2004, five CashPoint creditors claiming to be owed in excess of \$28 million placed CashPoint in Bankruptcy by filing in the Southern District of New York. See attached copies of press releases from Massachusetts Attorney General's Office and from the New Hampshire Public Utilities Commission Consumer Affairs Division.

According to information from the Commission's Office of Consumer Affairs an undetermined number of New Hampshire customers have made payments to CashPoint pay locations for transmittal to utilities which have not been forwarded to the intended

utility. These customer funds have apparently been caught up in the bankruptcy process or otherwise have been misdirected. In fact, a hearing is scheduled for 9:00 a.m.

Tuesday, May 11, 2004, in the CashPoint Bankruptcy, Case No. 04-12771 REG Chapter 7, U.S. Bankruptcy Court Southern District of New York, in order to establish procedures for dealing with these CashPoint funds. See attached copies of the Emergency Motion and proposed Order in the CashPoint Bankruptcy.

In order to protect the interest of New Hampshire utility customers and to clarify certain rights and obligations in the CashPoint situation at the state level the OCA requests that the Commission make the following findings and rulings pursuant to its statutory power to regulate New Hampshire utilities, See RSA 374:2 and 374:3:

1. That by accepting customer payments via CashPoint payment terminals New Hampshire utilities have created, at a minimum, an implied agency by CashPoint on their behalf for the collection of customer funds. (It is OCA's belief that some utilities have contracts with CashPoint for CashPoint to operate specific pay locations, whereas others may not have a contract but have accepted ratepayer payments from CashPoint, creating an implied agency arrangement between the utility and CashPoint.)
2. Based upon this implied agency, whenever a customer pays money to CashPoint for transmittal to a New Hampshire utility that payment shall be deemed a payment to the utility and any loss of that payment, once delivered to CashPoint, is the utility's risk and not the customer's.
3. New Hampshire Utilities which receive documentation or other reasonable evidence that a customer payment was made to CashPoint shall credit that

customer's account for the amount of the payment and shall have the option of pursuing repayment of those lost funds from CashPoint in its pending bankruptcy.

It is important that this declaratory relief be granted as quickly as possible to clarify that New Hampshire utilities will be left to pursue recovery of customer payments from CashPoint and not from customers. The CashPoint bankruptcy is underway and creditors will need to move quickly to protect their interests.

Further, the OCA believes that it will be appropriate to manage the risk of lost or mishandled funds by third party collection agents in the pending Billing Practices Rulemaking Docket, DRM 03-176. Nonetheless, the CashPoint issue has developed quickly and needs immediate attention in order to protect consumer interests. As a result, the OCA asks that the Commission handle the problems presented by the CashPoint bankruptcy as an adjudicative proceeding and continue to pursue the more generic issues of third party payment agents in the pending rulemaking docket.

Respectfully submitted,

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